

E-filing

## CIVIL COVER SHEET

ORIGINAL

JS 44 (Rev. 12/07) (and rev 1-16-08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> Mark Antoine Foster		<b>DEFENDANTS</b> Morgan Lewis & Bockius LLP and Eric Meckley	
<b>(b) County of Residence of First Listed Plaintiff</b> Alameda (EXCEPT IN U.S. PLAINTIFF CASES)		<b>County of Residence of First Listed Defendant</b> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.	
<b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> Mark Antoine Foster, In Pro Per 200 Corpus Christie Road, Apt. A Alameda, CA 94502 415-756-1611		<b>Attorneys (If Known)</b> Melinda S. Riechert, SBN 65504 Morgan Lewis & Bockius LLP 2 Palo Alto Square, 3000 El Camino Real, St. 700 Palo Alto, CA 94306 Tel: 650-843-4000	

<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)			
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State	<input type="checkbox"/> 1 PTF	<input type="checkbox"/> 1 DEF	Incorporated or Principal Place of Business In This State
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State	<input type="checkbox"/> 2 PTF	<input type="checkbox"/> 2 DEF	Incorporated and Principal Place of Business In Another State
		Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 PTF	<input type="checkbox"/> 3 DEF	Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus—Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

<b>V. ORIGIN</b> (Place an "X" in One Box Only)						
<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

<b>VI. CAUSE OF ACTION</b>	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 18 U.S.C. Sections 1341, 1343, 1345, and 1349 Brief description of cause: Plaintiff alleges claims of mail fraud, conspiracy to commit mail fraud, and wire fraud against Defendants.
----------------------------	---

<b>VII. REQUESTED IN COMPLAINT:</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	<b>DEMAND \$</b>	CHECK YES only if demanded in complaint: <b>JURY DEMAND:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
-------------------------------------	--	------------------	---

<b>VIII. RELATED CASE(S) IF ANY</b>	PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE". See attached "Notice of Related Cases"
-------------------------------------	---

<b>IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)</b>	<input checked="" type="checkbox"/> SAN FRANCISCO/OAKLAND	<input type="checkbox"/> SAN JOSE
---	---	-----------------------------------

DATE

2/28/08

SIGNATURE OF ATTORNEY OF RECORD

Melinda Riechert

MELINDA S. RIECHERT, State Bar No. 65504  
MORGAN, LEWIS & BOCKIUS LLP  
2 Palo Alto Square  
3000 El Camino Real, Suite 700  
Palo Alto, CA 94306-2122  
Tel: 650.843.4000  
Fax: 650.843.4001

Attorney for Defendants  
MORGAN LEWIS & BOCKIUS LLP and ERIC MECKLEY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**FILED**  
MAR - 7 2008  
RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**EDL**

MARK ANTOINE FOSTER,  
Plaintiff,

Case No.

CV 08

1937

vs.

MORGAN LEWIS & BOCKIUS, LLP, and  
ERIC MECKLEY, an individual, and DOES  
1 through 81,

Defendants.

**NOTICE OF REMOVAL OF ACTION  
28 U.S.C. SECTION 1441(b) – FEDERAL  
QUESTION**

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA:**

**PLEASE TAKE NOTICE THAT** Defendants MORGAN LEWIS & BOCKIUS LLP  
and ERIC MECKLEY (collectively, "Defendants") submit this Notice of Removal and, pursuant  
to 28 U.S.C. Section 1441, hereby remove to this Court the state action described below:

1. On or about February 7, 2008, Plaintiff Mark Antoine Foster commenced this  
action in the Superior Court of the State of California in and for the County of San Francisco,  
entitled *Mark Antoine Foster v. Morgan Lewis & Bockius, LLP and Eric Meckley, and Does 1-81*,  
Case No. CGC-08-471937, alleging causes of action for: (1) fraud and intentional deceit; (2)  
intentional misrepresentation of fact; (3) negligent misrepresentation; (4) suppression of fact; (5)

1 mail fraud (18 U.S.C. § 1341); (6) conspiracy to mail fraud (18 U.S.C. §§ 1345, 1349); (7) wire  
2 fraud (18 U.S.C. § 1343); (8) breach of fiduciary duty; (9) intentional infliction of emotional  
3 distress; and (10) negligent infliction of emotional distress. A true and correct copy of the  
4 Complaint and Summons, with the accompanying attachments, is attached hereto as **Exhibit 1**.

5 2. On February 7, 2008, Plaintiff caused the Complaint and Summons to be served  
6 on Defendants.

7 3. This Notice of Removal is timely filed, pursuant to 28 U.S.C. Section 1446(b), in  
8 that it is filed within thirty (30) days of receipt of Plaintiff's Complaint. No previous Notice of  
9 Removal has been filed or made with this Court for the relief sought.

10 4. This action is a civil action over which this Court has original jurisdiction pursuant  
11 to 28 U.S.C. Section 1331. This entire action is one which may be removed to this Court by  
12 Defendants pursuant to the provisions of 28 U.S.C. Section 1441(b), in that it is a civil action  
13 arising under the laws of the United States; specifically, Plaintiff has alleged claims for violations  
14 of 18 U.S.C. Sections 1341, 1343, 1345, and 1349.

15 5. Plaintiff's remaining state law causes of action are claims over which this Court  
16 may properly exercise supplemental jurisdiction pursuant to 28 U.S.C. Section 1367(a) because  
17 they form part of the same case or controversy as the claims over which this Court would have  
18 original jurisdiction.

19 6. The pleadings attached to this Notice as Exhibit 1 constitute all the process,  
20 pleadings, and orders filed in this action in San Francisco County Superior Court of which  
21 Defendants have served or been served to date.

22 7. Venue is proper in this district pursuant to 28 U.S.C. Section 1441(a), because this  
23 district embraces the county in which the removed action has been pending.

24 8. Defendants will promptly serve Plaintiff with this Notice of Removal and will  
25 promptly file a copy of this Notice of Removal with the clerk of the state court in which the  
26 action is pending, as required under 28 U.S.C. Section 1446(d).

27 9. This removal is being filed on behalf of all Defendants who have been named and  
28 served in the state court action.

1 WHEREFORE, pursuant to these statutes and in accordance with the procedures set forth  
2 in 28 U.S.C. Section 1446, Defendants pray that the above-captioned action pending in the  
3 Superior Court of the State of California in and for the County of San Francisco be removed  
4 therefrom to this Court.

5 Dated: February 27, 2008

MORGAN, LEWIS & BOCKIUS LLP

6  
7 By Melinda Riechert  
8 Melinda S. Riechert  
9 MORGAN LEWIS & BOCKIUS LLP and  
ERIC MECKLEY

10 1-SF/7669874.1  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



SUM-100

# SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: MORGAN LEWIS & BOKIUS LLP  
(AVISO AL DEMANDADO): AND ERIC MECKLEY AS  
An Individual and Does  
1 through 81

YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

MARK ANTOINE ROSTER

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is: SUPERIOR COURT  
(El nombre y dirección de la corte es): 400 MCALLISTER STREET RM 103  
SAN FRANCISCO CA 94102

CASE NUMBER: ESC-08-471937  
(Número del caso)

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

MARK ANTOINE ROSTER  
200 CORNUS CRISTAL RD #14

D. STEPPE

DATE: Alameda CA 94502

(Fecha) FEB 07 2008

Jordon Park-L

Clerk, by  
(Secretario)

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
- ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
- ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
- ☐ other (specify):
4. ☐ by personal delivery on (date):

Page 1 of 1



1 Mark Antoine Foster, In Pro Per  
2 200 Corpus Cristie Road #A  
3 Alameda, CA 94502  
4 (415) 756-1611

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

FEB 07 2008

GORDON PARK-LI, Clerk  
BY: DEBORAH STEPPE  
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

JUL 11 2008 -9<sup>00</sup>AM

DEPARTMENT 212

8 SUPERIOR COURT OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SAN FRANCISCO

10 CIVIL UNLIMITED JURISDICTION

11 **CGC-08-471937**

12 MARK ANTOINE FOSTER,

13 Plaintiff,

14 vs.

15 MORGAN LEWIS & BOCKIUS, LLP  
16 AND ERIC MECKLEY, as an  
17 Individual, and DOES 1 through  
18 81

Defendants

**COMPLAINT FOR DAMAGES FOR  
CIVIL RIGHTS (related to Employment  
discrimination)**

1. Fraud and Intentional Deceit
2. Intentional Misrepresentation of Fact
3. Negligent Misrepresentation
4. Suppression of Fact
5. Mail Fraud (18 U.S.C. Sec. §1341)
6. Conspiracy to Mail Fraud (18 U.S.C. Sec. §1345, §1349)
7. Wire Fraud (18 U.S.C. Sec. §1343)
8. Breach of Fiduciary Duty
9. Intentional Infliction of Emotional Distress
10. Negligent Infliction of Emotional Distress

20 INTRODUCTION

21 This case is brought against defendants pursuant to  
22 California Codes of Civil Procedure §1709, §1710 and §1572 for  
23 committing acts that constitute fraud and intentional deceit,  
24 mail fraud and wire fraud and conspiracy to defraud. Defendant

25 COMPLAINT FOR DAMAGES, CIVIL RIGHTS

1 Law Firm Morgan Lewis & Backius and its employee attorney Eric  
2 Meckley conspired with their clients Aramark Sports, L.L.C. and  
3 Aramark Corporation to defraud plaintiff of his disability  
4 discrimination claim against defendant Aramark Corporation. The  
5 acts were committed to shield their client from a "would be"  
6 claim of disability discrimination claim and deprive plaintiff  
7 of any monetary damages that would be awarded to plaintiff as a  
8 result. Defendant's acts were related to plaintiff's previous  
9 employment with ARAMARK, as defendants committed these  
10 acts after plaintiff's employment with the defendants ended.

11 Although the acts were committed after plaintiff's  
12 employment ended, the acts were connected to claims plaintiff  
13 alleged in a previous complaint plaintiff filed against  
14 ARAMARK in San Francisco Superior Court on March 9, 2007.  
15 These acts show a continuing pattern of further deprivation of  
16 plaintiff's civil rights by defendants.

17 The connected case number 07461178, which alleges acts that  
18 were committed by defendants while plaintiff was employed with  
19 the ARAMARK has been presently removed to federal court by  
20 ARAMARK on January 30, 2008 which plaintiff believes is an  
21 attempt to delay trial and prosecution of the case in state  
22 court. Plaintiff will file a motion for remand in federal court  
23 to have the case moved back to state court within 30 days of its  
24 removal.

25 ARAMARK stated to the court in their case management



1 conference statement that they would file a motion for summary  
2 judgment or as an alternative a motion for summary adjudication  
3 but instead, upon discovering that plaintiff has acquired enough  
4 evidence to support his claims through his own discovery plan,  
5 defendants removed the case to federal court in an attempt to  
6 divert plaintiff and gather their thoughts as to how they want  
7 and should settle the case.

8 Plaintiff will ~~file~~ also file a second amended complaint  
9 adding claims alleging Wrongful Termination, additional  
10 retaliation that resulted in Fraud and Intentional Deceit,  
11 Suppression of Fact, and to change quid pro quo sexual  
12 harassment to hostile work environment sexual harassment.

13 Plaintiff will also file a supplemental complaint alleging  
14 continued retaliation after plaintiff filed his complaint on  
15 March 9, 2007.

#### 16 PARTIES

17 1. Plaintiff Mark Antoine Foster was an employee of  
18 defendant Morgan and Lewis's client Aramark Sports and  
19 Entertainment, a subsidiary of Aramark Corporation. He worked  
20 for the Carnelian Room located at 555 California Street, San  
21 Francisco, California.

22 2. Defendants does 1 through 81, inclusive, are sued  
23 under fictitious names. Their true names and capacities are  
24 unknown to plaintiff. When their true names and capacities are  
25 ascertained, plaintiff will amend this complaint by inserting

1 their true names and capacities herein. Plaintiff is informed  
2 and believes and thereon alleges that each of the fictitiously  
3 named defendants is responsible in some manner for the  
4 occurrences herein alleged, and such defendants caused plaintiff  
5 damages as herein alleged.

6 3. Plaintiff is informed and believes, and thereon  
7 alleges, that at all times herein mentioned each and every  
8 defendant was the agent, servant, employee and/or representative  
9 of each other defendant and was, in doing the things complained  
10 of herein, acting within the scope of said agency, service,  
11 employment and or representation, and that each and every  
12 defendant herein is jointly and severally responsible and liable  
13 to plaintiff for the damages hereinafter alleged.

14 JURISDICTION AND VENUE

15 4. Jurisdiction is proper in this court as the acts  
16 complained of occurred in San Francisco,  
17 California.

18 5. The amount in controversy exceeds limited  
19 jurisdiction.

20 6. Plaintiff timely files this complaint, as he  
21 discovered the fraudulent acts of the defendants in  
22 December 2007.

23 7. Plaintiff will amend this complaint to allege those  
24 causes of action once defendants respond to the claim.

25 **FIRST CAUSE OF ACTION  
FRAUD AND INTENTIONAL DECEIT**

(California Civil Codes 1709, 1710 and 1572)

**FIRST COUNT**

**INTENTIONAL MISREPRESENTATION OF FACT**

8. Plaintiff realleges and incorporates herein by reference every allegation stated herein.

9. Plaintiff is informed, believes and therefore alleges that the defendants' acts constituted fraud and intentional deceit due to the defendants attempting to help their client cover-up a possible or "would-be" disability discrimination claim from plaintiff, in the event plaintiff discovered that defendants discriminated against due to his disability.

10. On or around March 28, 2006, plaintiff requested a medical leave from Aramark due to work related stress allegedly caused by two of the Aramark's supervisor/managers. On or around March 28, 2006, plaintiff signed an voluntary resignation agreement stating he would return no later than June 15, 2006 and that if he did not return by June 15, 2006, his absence would be considered a voluntary quit and he will be terminated on that day.

11. On or around June 15, 2006, plaintiff did not return to work due to (1) still being disabled and (2) due to fear of further retaliation from ~~ARAMARK~~, and (3) due to fear of being terminated once he did return to work for the Aramark.

12. Plaintiff is informed, believes and therefore alleges that he was forced to resign on June 15, 2006 pursuant to the voluntary resignation agreement he signed on March 28, 2006,

1 absent Aramark offering plaintiff a further reasonable  
2 accommodation to his disability before allowing him to "  
3 voluntarily quit", as voluntary quit in this case is voluntary  
4 termination, which results in its simple form - termination of  
5 employment.

6 13. On or around March 9, 2007, plaintiff filed a  
7 complaint against defendants Aramark Sports, LLC, and Ying Kee  
8 McVicker and Mathew Lee as individuals, alleging Retaliation,  
9 Harassment, Constructive Discharge, Failure to Prevent  
10 Harassment, and Intentional Infliction of Emotional Distress.  
11 Plaintiff did not in this complaint allege Disability  
12 Discrimination due to not knowing his was or had been subject to  
13 disability Discrimination at that point in time. Plaintiff  
14 discovered in January 2008 that he had been subject to  
15 disability discrimination on June 15, 2006.

16 14. Plaintiff alleges that sometime in Feb. 2007, he  
17 requested his employee records from Aramark, specifically  
18 Aramark's HR Manager, James Chan. Mr. Chan released plaintiff's  
19 employee records which contained a copy of the voluntary  
20 resignation agreement dated March 28, 2006 plaintiff signed  
21 agreeing to return on June 15 2006. On the Face of the Voluntary  
22 Resignation Agreement was a notation made by James Chan stating  
23 that he communicated with the Executive Chef regarding Plaintiff  
24 not returning to work on June 15, 2006. Plaintiff alleges that  
25

1 this is evidence that he was terminated pursuant to the  
2 voluntary resignation agreement, in addition to the fact that  
3 the mere existence of the voluntary resignation agreement shows  
4 plaintiff was more than likely terminated pursuant to it.

5 15. On or around August 28, 2007, plaintiff served Aramark  
6 a request for documents demanding all documents relevant to his  
7 termination; instead of Aramark producing the same documents he  
8 received from James Chan before he filed his lawsuit ~~ARAMARK~~ :  
9 presented another version of the voluntary resignation without  
10 the notation of James Chan on the face of the agreement. This  
11 shows defendants withheld evidence.

12 16. On or around December 20, 2007, plaintiff realized  
13 through research that he had been subject to Disability  
14 Discrimination and in December 2007, filed a motion to amend his  
15 complaint to add Disability Discrimination under the ADA, UNRUH  
16 and FEHA. Defendants stipulated with plaintiff to allow the  
17 amendment.

18 17. On or Around Jan 15, 2008, Plaintiff discovered  
19 through his Discovery served on Aramark that he was defrauded by  
20 defendants, as defendants conspired with their clients to help  
21 cover up or attempt to cover-up the fact that they had  
22 discriminated against plaintiff due to his mental disability.

23 18. On or around May 2, 2007, defendants with their client  
24 Aramark and their clients' Worker's compensation Attorneys Gray  
25



1 and Prouty, requested from plaintiff that he agree and sign a  
2 document stating that he voluntarily resigned on May 1, 2007.  
3 The purpose for defendants' request was to allow the proposed  
4 agreement to void out the agreement signed on March 28, 2006, as  
5 this agreement is the initial and actual reason why plaintiff  
6 was terminated: which was when plaintiff was forced to resign  
7 due to his disability violating ADA, the Unruh and FEHA.

8 19. Defendants and their client Aramark submitted the  
9 agreement to plaintiff for his signature. Plaintiff then refused  
10 to agree that he resigned on May 1, 2007, knowing that he  
11 resigned on June 15, 2006, pursuant to the agreement signed on  
12 March 28, 2006.

13 20. Defendants insisted that plaintiff sign the agreement  
14 prior to releasing his already agreed upon Worker's Compensation  
15 settlement of \$5,500. Plaintiff altered the date and signed the  
16 agreement as voluntarily resigning on June 15, 2006, not May 1,  
17 2007 as Defendants requested he do. Although plaintiff did not  
18 sign the agreement as voluntarily resigning on May 1, 2007, he  
19 did sign agreeing that he *voluntarily resigned* on June 15, 2006.  
20 Even though defendants were not successful in getting plaintiff  
21 to agree that he resigned on May 1, 2007, they planned to use  
22 the agreement anyway to void out the original agreement signed  
23 on March 28, 2006. Defendant planned to use the new agreement to  
24 say that plaintiff resigned on June 15, 2006 to give the

1 impression that he voluntarily resigned on his own on June 15,  
2 2006 and not pursuant to the agreement he signed on March 28,  
3 2006, to shield themselves from disability discrimination.

4 Although the mere existence of any voluntary agreement plaintiff  
5 signed in May 2007, or anytime thereafter is a fraud.

6 21. Plaintiff is informed believes and therefore alleges  
7 that the defendants made a false representation offering the  
8 voluntary resignation agreement. The true facts being; Aramark  
9 forced plaintiff to resign pursuant to the voluntary resignation  
10 agreement he signed on March 28, 2006, and defendants and Aramark  
11 were attempting to suppress this material fact. Defendants  
12 requesting plaintiff to sign the agreement presented on May 2,  
13 2007. This act was FRAUD in its purest Form. Defendants abused  
14 their position of attorneys and held back the agreed upon  
15 settlement to coerce plaintiff to sign the agreement, causing  
16 plaintiff to defraud his own self. Plaintiff signed the  
17 agreement and returned it, as this proves that the FRAUD reached  
18 its full Fruition or Justifiable reliance, damaging plaintiff  
19 even further.

20 22. Plaintiff alleges that it was a misrepresentation of  
21 Material Fact by Defendants to request plaintiff to agree and  
22 sign an agreement stating that his voluntary resignation was on  
23 a date after he had already voluntarily resigned in an attempt  
24 to cover up a possible disability discrimination claim against  
25

1 their clients.

2 23. Defendants attempt to use the document to void out his  
3 original resignation agreement signed on March 28, 2006 was  
4 despicable conduct done with malice. Defendants attempted to  
5 help their clients defraud Plaintiff of his rightful claim of  
6 disability discrimination and the tangible and intangible  
7 benefits representing monetary and other remedy for damages that  
8 could be awarded due to the disability claim. This act is  
9 clearly an intentional misrepresentation of Material Fact.

10 24. When the Defendants made the representations, they  
11 knew then to be false or were based on false pretenses or  
12 misrepresentations, as the defendants made these representations  
13 with the intention to deceive and defraud plaintiff and to  
14 induce plaintiff to act in reliance on these representations in  
15 the manner alleged, or with the expectation that plaintiff would  
16 so act. Defendants expected plaintiff to sign the agreement so  
17 he could receive his WC Settlement of \$5,500 and coerced him to  
18 sign the agreement before agreeing to release payment of the  
19 \$5,500 to him.

20 25. Plaintiff at the time these representations were made  
21 by Defendants, believed that that the Defendants representations  
22 were true. Due to believing, plaintiff thought it was acceptable  
23 or all right to sign the document, and that it was not depriving  
24 him of any further rights and that there was a legal forthright

25  
COMPLAINT FOR DAMAGES, CIVIL RIGHTS

1 reason for defendants requesting him to sign the voluntary  
2 agreement. Aramark and the defendants used their positions as  
3 attorneys to help present the document to trick plaintiff, as if  
4 it was legal when actually it was not, as this shows that  
5 plaintiff's reliance on defendant representation was justified.

6 26. Plaintiff alleges that he has satisfied all the  
7 elements for intentional misrepresentations, which includes: (1)  
8 misrepresentations (2) Material Fact (3) Knowledge of Falsity  
9 (4) Intent to induce reliance (5) Justifiable reliance and (6)  
10 Causation and Damages

11 27. Defendants attempt to defraud Plaintiff violated  
12 California Civil Codes 1709, 1710, and 1572

13 28. As a proximate result of the fraudulent conduct or the  
14 defendants as herein alleged, plaintiff was subjected to Fraud  
15 and Intentional Deceit that subject or caused him emotional  
16 distress and mental anguish.

17 29. The aforementioned conduct of defendants was an  
18 intentional misrepresentation, deceit, or concealment of a  
19 material fact know to the defendants with the intention on the  
20 part of the defendants to deprive the plaintiff of property or  
21 legal rights, causing injury, and was despicable conduct that  
22 subjected plaintiff to a cruel unjust hardship in conscious  
23 disregard of the plaintiff's rights, so as to justify an award  
24 of exemplary and punitive damages.

SECOND COUNT

Negligent Misrepresentation

30. When the defendants made the representation they had no reasonable grounds for believing them to be true. Defendants knew that (1) it was not necessary for Plaintiff to sign the Agreement at all (2) it was not necessary for plaintiff to sign the agreement as a condition to him receiving or defendants releasing plaintiff's already agreed upon worker's compensation settlement of \$5,500.

31. Plaintiff alleges that the defendants made the representation with intent to induce plaintiff to rely upon it.

32. Plaintiff alleges that he was unaware of the falsity of the representation; in that he did not know that the purpose or the agreement was to shield Aramark from a possible discrimination disability claim from plaintiff, depriving plaintiff of any possible monetary damages from the claim.

33. Plaintiff alleges that he acted in reliance upon the truth of the representation; as in him thinking it was necessary to sign the agreement, as he believed it to be safe or true because it was presented to him by Aramark's worker's compensation attorney. Plaintiff believed it to be true because he knew Defendants and Aramark's Worker's Compensation Attorneys knew exactly when he actually resigned or knew Plaintiff



1 resigned on June 15, 2006 pursuant to the March 28, 2006  
2 agreement.

3 34. Defendants initiating these actions in an attempt to  
4 DEFRAUD plaintiff of his claim of disability discrimination and  
5 any possible monetary damages that would be awarded in lieu of  
6 the disability discrimination claim, violated California Codes  
7 \$1572, \$1709 and \$1710, Therefore Plaintiff is entitled to  
8 Statutory Damages, Costs and awards of Attorney Fees.

9 THIRD COUNT

10 Suppression of Fact

11 35. Defendants suppressed the fact that if was not  
12 necessary for plaintiff to agree and sign the voluntary  
13 resignation agreement to receive his worker's compensation  
14 settlement of \$5,500.

15 36. In addition on or around July 2, 2007, Aramark's  
16 worker's compensation Attorney Dana Mitchell filed an opposition  
17 to plaintiff's Readiness to Proceed. In the opposition,  
18 Defendants state or implied that the reason plaintiff's  
19 settlement of \$5,500 had not been paid was due to plaintiff  
20 filing an EEOC Claim subsequent to agreeing to the settlement of  
21 \$5,500 with defendants. Defendants lied to the Worker's  
22 Compensation Appeals Board to create a "Smoke screen" or cover  
23 up as to the actual reason plaintiff's settlement was held up,  
24 which was defendants wanting to force plaintiff to sign the

1 agreement to shield them from the disability discrimination  
2 claim. Defendants concealed from the Worker's Compensation  
3 Appeals Board that there was no EEOC Claim filed by plaintiff  
4 subsequent to the agreement of the worker's compensation  
5 Settlement.

6 37. The defendants made the failure to disclose and  
7 suppressed and/or concealed the information mentioned herein  
8 alleged, with the intent to induce the plaintiff to act in the  
9 manner herein alleged in reliance thereupon, with the intent to  
10 cause plaintiff to sign the agreement.

11 38. As a proximate result of the fraudulent conduct or the  
12 defendants as herein alleged, plaintiff was subjected to Fraud  
13 and Intentional Deceit that subject or caused him emotional  
14 distress and mental anguish.

15 39. The aforementioned conduct of defendants was an  
16 intentional misrepresentation, deceit, or concealment of a  
17 material fact known to the defendants with the intention on the  
18 part of the defendants of to deprive the plaintiff of property  
19 or legal rights, causing injury, and was despicable conduct that  
20 subjected plaintiff to a cruel unjust hardship in conscious  
21 disregard of the plaintiff's rights, so as to justify an award  
22 of exemplary and punitive damages.

23 40. Defendants' attempt to defraud plaintiff violated  
24 section 1572 of the California Civil Code. Plaintiff is  
25

1 therefore entitled to Statutory Damages, Costs and award of  
2 Attorney fees.

3 Wherefore Plaintiff prays for judgment against Defendants  
4 as more fully set forth below.

5 SECOND CAUSE OF ACTION

6 Mail Fraud (18 U.S.C. Section 1341)

7 41. Plaintiff realleges and incorporates therein by  
8 reference every allegation stated herein.

9 42. On or around May 2, 2007 Defendants mailed to  
10 Plaintiff by way of his Worker's Compensation Attorney Mary Lou  
11 Williams, the voluntary agreement, which was the execution of a  
12 scheme to defraud plaintiff.

13 43. Title 18 - Crimes and Criminal Procedures, Part 1 -  
14 Crimes Chapter 63 section 1341 Frauds and Swindles States:  
15 Whoever, having devised or intending to devise any scheme or  
16 artifice to defraud, or for obtaining money or property by means  
17 of false or fraudulent pretenses, representations, or promises,  
18 or to sell, dispose of, loan, exchange, alter, give away,  
19 distribute, supply, or furnish or procure for unlawful use any  
20 counterfeit or spurious coin, obligation, security, or other  
21 article, or other article, or anything represented to be or  
22 intimated or held out to be such counterfeit or spurious  
23 article, for the purpose of executing such scheme or artifice or  
24 attempting so to do, places in any post office or authorized

1 depository for mail matter, any matter or thing whatever to sent  
2 or delivered by the Postal Service, or Deposits or causes to be  
3 deposited any matter or thing whatever to sent or delivered by  
4 any private or commercial interstate carrier, or takes or  
5 receives therefrom, any such matter or thing, or knowingly  
6 causes to be delivered by mail or such carrier according to the  
7 direction thereon, or at the place at which it is directed to be  
8 delivered by the person to whom it is addressed, any such matter  
9 or thing shall be fined under this title or shall be fined under  
10 this title or imprisoned not more than 20 years, or both.

11 44. Upon Defendants placing the Voluntary Resignation  
12 Agreement in the Post Office for Mail matter to be sent by the  
13 Postal Service, the Defendants committed Mail Fraud.

14 FIRST COUNT OF MAIL FRAUD

15 45. On or around May 2, 2007 upon Defendants mailing the  
16 Voluntary Resignation Agreement to Mary Lou Williams at 4104 24<sup>th</sup>  
17 Street, San Francisco, CA 94104 constitutes first count of mail  
18 fraud.

19 SECOND COUNT OF MAIL FRAUD

20 46. On or around May 2, 2007 upon Defendants mailing a copy  
21 of the Voluntary Resignation Agreement to Gretchen McCoy at SRS,  
22 at P.O. Box 591, Burbank, CA constitutes second count of mail  
23 fraud, as it was initiated to further the Scheme.

24 THIRD COUNT OF MAIL FRAUD

25 COMPLAINT FOR DAMAGES, CIVIL RIGHTS

1 47. On or around May 2, 2007 upon Defendants mailing a copy  
2 of the Voluntary Resignation Agreement to Mark Antoine Foster at  
3 725 Ellis Street, San Francisco, CA., constitutes a third count  
4 of mail fraud, as it was initiated to further the Scheme.

5 FOURTH COUNT OF MAIL FRAUD

6 48. On or around July 3, 2007 upon Defendants mailing a  
7 copy of the opposition to Plaintiff's Declaration of Readiness  
8 to Proceed to the Worker's Compensation Appeals Board  
9 constitutes a Fourth Count of MAIL FRAUD, as it was initiated to  
10 further the Scheme.

11 FIFTH COUNT OF MAIL FRAUD

12 49. On or around July 3, 2007 upon Defendants mailing a  
13 copy of the opposition to Plaintiff's Declaration of Readiness  
14 to Proceed Mary Lou Williams at 4104 24<sup>th</sup> Street, San Francisco,  
15 CA 94104 constitutes a Fifth Count of MAIL FRAUD, as it was  
16 initiated to further the Scheme.

17 SIXTH COUNT OF MAIL FRAUD

18 50. On or around July 3, 2007 upon Defendants mailing a  
19 copy of the opposition to Plaintiff's Declaration of Readiness  
20 to Proceed Gretchen Devine at Specialty Risk Services at P.O.  
21 Box 591, Burlingame, CA constitutes a Sixth Count of MAIL FRAUD,  
22 as it was initiated to further the Scheme.

23 51. As a proximate result of the fraudulent conduct or the  
24 defendants as herein alleged, plaintiff was subjected to Fraud



1 and Intentional Deceit and Mail Fraud that or caused him  
2 emotional distress and mental anguish.

3 52. The aforementioned conduct of defendants was an  
4 intentional misrepresentation, deceit, or concealment of a  
5 material fact know to the defendants with the intention on the  
6 part of the defendants of to deprive the plaintiff of property  
7 or legal rights, causing injury, and was despicable conduct that  
8 subjected plaintiff to a cruel unjust hardship in conscious  
9 disregard of the plaintiff's rights, so as to justify an award  
10 of exemplary and punitive damages.

11 53. Defendants' attempt to defraud plaintiff violated  
12 section 1572 of the California Civil Code. Plaintiff is  
13 therefore entitled to Statutory Damages, Costs and award of  
14 Attorney fees.

15 Wherefore Plaintiff prays for judgment against Defendants  
16 as more fully set forth below.

17 THIRD CAUSE OF ACTION

18 CONSPIRACY TO DEFRAUD

19 (18 U.S.C. SECTION §1345, §1349)

20 54. Plaintiff realleges and incorporates therein by  
21 reference every allegation stated herein.

22 55. Plaintiff is informed, believes and therefore alleges  
23 that between March 9, 2007 and May 1, 2007 Defendants and members  
24 of Aramark's Management conspired to defraud plaintiff by  
25

1 attempting to cover-up a "would be" Disability Discrimination  
2 Claim and wrongful termination Claim pursuant to the ADA, the  
3 UNRUH and FEHA.

4 56. Plaintiff is informed, believes and therefore alleges  
5 that Aramark's managers conspired and with their council, both  
6 Gray & Prouty and Morgan & Lewis to submit and offer the  
7 Voluntary Resignation Agreement to plaintiff, on May 2, 2007,  
8 knowing it was being submitted for fraudulent reasons.

9 57. Defendants conspiring to defraud plaintiff violated  
10 California Civil Codes 1709, 1710 and 1572 and 18 U.S.C. Section  
11 1345, and 1349.

12 58. As a proximate result of the fraudulent conduct of the  
13 defendants as herein alleged, plaintiff was subjected to fraud  
14 and intentional deceit and MAIL FRAUD, causing plaintiff to  
15 suffer emotional stress.

16 59. The aforementioned conduct of defendants was an  
17 intentional misrepresentation deceit, or concealment of a  
18 material fact know to the defendants with the intention on the  
19 part of the defendants of thereby depriving the plaintiff of  
20 property or legal rights causing injury, and was despicable  
21 conduct that subjected plaintiff to a cruel unjust hardship in  
22 conscious disregard of the plaintiff's rights, so as to justify  
23 an award of exemplary and punitive damages.

24 Wherefore Plaintiff prays for judgment against Defendants  
25

1 as more fully set forth below.

2 FOURTH CAUSE OF ACTION

3 WIRE FRAUD

4 18 U.S.C. SECTION 1343

5 60. Plaintiff realleges and incorporates therein by  
6 reference every allegation stated herein.

7 61. Plaintiff is informed, believes and therefore alleges  
8 that between March 9,2007 and May 2,2007, Defendants and members  
9 of Aramark Management utilized emails, the telephone or by fax  
10 to further their Scheme to defraud Plaintiff by attempting to  
11 cover-up a "would be" disability discrimination claim and  
12 wrongful termination Claim pursuant to the ADA, the UNRUH and  
13 FEHA.

14 62. Plaintiff is informed, believes and therefore alleges  
15 that between March 9,2007 and May 2,2007, Defendants and members  
16 of Management of Aramark conspired with their council Gray &  
17 Prouty and Morgan & Lewis to submit the offer to plaintiff in  
18 the form of the agreement.

19 63. Defendant's use of the above mentions methods of  
20 Communication to defraud plaintiff violated Section California  
21 Civil Codes 1709, 1710 and 18 U.S.C. Section 1343.

22 64. As a proximate result of the Fraudulent conduct or the  
23 defendants as herein alleged, Plaintiff was subjected to Fraud  
24 and Intentional Deceit and ~~MAIL~~<sup>WIRE</sup> FRAUD, causing plaintiff

1 emotional stress.

2 65. The aforementioned conduct of defendants was an  
3 intentional misrepresentation, deceit, or concealment of a  
4 material fact know to the defendants with the intention on the  
5 part of the defendants, thereby depriving the plaintiff of  
6 property or legal rights causing injury to plaintiff, and was  
7 despicable conduct that subjected plaintiff to a cruel unjust  
8 hardship in conscious disregard of the plaintiff's rights, so as  
9 to justify an award of exemplary and punitive damages.

10 Wherefore Plaintiff prays for judgment against Defendants  
11 as more fully set forth below.

12 FIFTH CAUSE OF ACTION

13 BREACH OF FIDUCIARY DUTY

14 66. Plaintiff realleges and incorporates therein by  
15 reference every allegation stated herein.

16 67. Defendants, as attorneys, breached their fiduciary  
17 duty, as attorneys, they were negligent in their duties and  
18 behaved in a way that was despicable due to them being attorneys  
19 having a duty of care to uphold the law, knowing they were  
20 helping break the law. Defendants knew the acts being committed  
21 were being done for fraudulent reasons and still allowed  
22 themselves to conspire with their clients to help defraud  
23 plaintiff. Defendants recognized the risks created by their  
24 actions and Aramark actions and understood what could happen

1 from those risks taken.

2 68. Plaintiff alleges that defendants knew all details  
3 regarding plaintiff's employment with their client Aramark,  
4 including knowing when plaintiff actually resigned and why.  
5 Defendants knew requesting and coercing plaintiff to sign the  
6 agreement presented on May 2, 2007 was to void out the original  
7 agreement plaintiff signed on March 28, 2006 to help shield  
8 their client Aramark from a possible discrimination claim from  
9 plaintiff.

10 69. Plaintiff alleges that professional attorneys are held  
11 to a higher standard of care than an ordinary reasonable person  
12 would be. Attorneys must behave as a reasonable attorney would  
13 do so rather than a reasonable person. The perspective of an  
14 attorney would be different matters in the court. Defendants  
15 Morgan and Lewis, and Eric Meckley owe plaintiff a reasonable  
16 standard of care.

17 70. Plaintiff alleges that the defendants' acts breached  
18 their fiduciary duty violating section §3300 of the California  
19 Civil Code.

20 71. As a direct and proximate result of said breach,  
21 plaintiff has suffered the actual and special and general  
22 damages as alleged, and which are incorporated herein by this  
23 reference, and seek recovery of the same, and for an award of  
24 costs and reasonable attorney fees.



1        72. Plaintiff alleges that the defendants' breach was  
2 committed to defraud plaintiff and was in conscious disregard of  
3 plaintiff's rights and was willful, oppressive and malicious;  
4 and designed to cause plaintiff to suffer economic and emotional  
5 injury. Plaintiff is therefore entitled to an award of exemplary  
6 and punitive damages against defendants, in an amount to be  
7 determined at trial.

8        Wherefore Plaintiff prays for judgment against Defendants  
9 as more fully set forth below.

10                INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

11        73. Plaintiff realleges and incorporates therein by  
12 reference every allegation stated herein.

13        74. The fraudulent actions of defendants were outrageous,  
14 intentional and malicious and done with reckless disregard of  
15 the fact that they would certainly cause plaintiff to suffer  
16 severe emotional and physical distress. Defendants knew that  
17 defrauding plaintiff in an attempt to deprive from his "would  
18 be" Disability Discrimination Claim would certainly cause him to  
19 suffer severe emotional and physical distress. Defendants also  
20 knew Plaintiff had already suffered psychological injury due to  
21 the previous acts of the Aramark while Plaintiff was employed at  
22 the Carnelian Room, but still proceeded with their Fraudulent  
23 acts after Plaintiff resigned or was constructively Discharged.

24        75. As a proximate result of the acts of defendants,  
25

1 Plaintiff has and will more than likely continue to suffer  
2 emotional distress in the form of fear, anxiety, worry, and  
3 mental suffering as the injury will have an effect on  
4 Plaintiff's future capacity to work and earn income.

5 76. Plaintiff will seek more psychological counseling as a  
6 result of the defendants conduct.

7 77. As a proximate result of Defendants conduct, Plaintiff  
8 has suffered general Damages in an amount to be determined by  
9 Proof at Trial.

10 78. Defendants conduct was done knowingly, willfully and  
11 with malicious intent and Plaintiff can prove the fraudulent  
12 acts of Defendants by "clear and convincing" evidences and  
13 therefore Plaintiff is entitled o Punitive Damages in an amount  
14 to be determined by Proof at trial.

15 Wherefore Plaintiff prays for judgment against Defendants  
16 as more fully set forth below.

17 NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

18 79. Plaintiff realleges and incorporates therein by  
19 reference every allegation stated herein.

20 80. Plaintiff is informed, believes and therefore alleges  
21 that Defendant Morgan and Lewis is negligent in causing  
22 plaintiff Emotional Distress, in that Defendant Morgan and Lewis  
23 has breached their duty of care by allowing themselves as  
24 attorneys and their client Aramark to intentionally inflict  
25

1 Plaintiff with Emotional Distress causing Plaintiff injury  
2 resulting in damages. Defendants' negligence causing of  
3 Emotional Distress is not an independent Tort: it is a Tort of  
4 Negligence.

5 81. As a proximate result of the fraudulent conduct of  
6 the defendants as herein alleged, plaintiff was injured  
7 emotionally and mentally suffering damage

8 Wherefore Plaintiff prays for judgment against Defendants  
9 as more fully set forth below.

10 PRAYER FOR RELIEF

11 WHEREFORE, Plaintiff FOSTER prays for judgment against  
12 defendants, and each of them, as more fully set forth below:

- 13 1. For general damages, including emotional distress,  
14 according to proof;
- 15 2. For statutory penalties and all relief allowed by  
16 statute according to proof;
- 17 3. For punitive damages;
- 18 4. For an award of attorney's fees;
- 19 5. For pre-judgment interest at the legal rate according to  
20 proof;
- 21 6. For costs of suit incurred;
- 22 7. For such other and further relief as the court may deem  
23 proper.

24 Dated:

February 7, 2008

*Mark A. Foster*  
Mark Antoine Foster, In Pro Per

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## **Alternative Dispute Resolution (ADR) Program Information Package**

# **Alternatives to Trial**

**There are other ways to  
resolve a civil dispute.**

**The plaintiff must serve a copy of the ADR information package  
on each defendant along with the complaint. (CRC 201.9(c))**

**Superior Court of California  
County of San Francisco**





## Introduction

**Did you know that most civil lawsuits settle without a trial?**

**And did you know that there are a number of ways to resolve civil disputes without having to sue somebody?**

**These alternatives to a lawsuit are known as alternative dispute resolutions (ADR). The most common forms of ADR are mediation, arbitration and case evaluation. There are a number of other kinds of ADR as well.**

**In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. For example, in mediation, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.**

**ADR is not new. ADR is available in many communities through dispute resolution programs and private neutrals.**

## Advantages of ADR

**ADR can have a number of advantages over a lawsuit.**

- ***ADR can save time.*** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- ***ADR can save money.*** Court costs, attorneys fees, and expert fees can be saved.
- ***ADR can be cooperative.*** This means that the parties having a dispute may work together with the neutral to resolve the dispute and agree to a remedy that makes sense to them, rather than work against each other.
- ***ADR can reduce stress.*** There are fewer, if any, court appearances. And because ADR can be speedier, and save money, and because the parties are normally cooperative, ADR is easier on the nerves. The parties don't have a lawsuit hanging over their heads for years.
- ***ADR encourages participation.*** The parties may have more chances to tell their side of the story than in court and may have more control over the outcome.
- ***ADR is flexible.*** The parties can choose the ADR process that is best for them. For example, in mediation the parties may decide how to resolve their dispute.
- ***ADR can be more satisfying.*** For all the above reasons, many people have reported a high degree of satisfaction with ADR.

Because of these advantages, many parties choose ADR to resolve a dispute, instead of filing a lawsuit. Even when a lawsuit has been filed, the court can refer the dispute to a neutral before the parties' position harden and the lawsuit becomes costly. ADR has been used to resolve disputes even after a trial, when the result is appealed.

## **Disadvantages of ADR**

ADR may not be suitable for every dispute.

- If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.
- There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.
- The neutral may charge a fee for his or her services.
- If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.
- Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

## **ALTERNATIVE DISPUTE RESOLUTION PROGRAMS Of the San Francisco Superior Court**

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to a mandatory settlement conference or trial." (Superior Court Local Rule 4)

This guide is designed to assist attorneys, their clients and self-represented litigants in complying with San Francisco Superior Court's alternative dispute resolution ("ADR") policy. Attorneys are encouraged to share this guide with clients. By making informed choices about dispute resolution alternatives, attorneys, their clients and self-represented litigants may achieve a more satisfying resolution of civil disputes.

The San Francisco Superior Court currently offers three ADR programs for general civil matters; each program is described below:

- 1) Judicial Arbitration
- 2) Mediation
- 3) The Early Settlement Program (ESP) in conjunction with the San Francisco Bar Association.

### **JUDICIAL ARBITRATION**

#### ***Description***

In arbitration, a neutral "arbitrator" presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case. When the Court orders a case to arbitration it is called judicial arbitration. The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial. Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.

Although not currently a part of the Court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties

voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

### ***Operation***

Pursuant to CCP 1141.11 and Local Rule 4, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. A case is ordered to arbitration after the Case Management Conference. An arbitrator is chosen from the Court's Arbitration Panel. Most cases ordered to arbitration are also ordered to a pre-arbitration settlement conference. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a court trial within 30 days after the arbitrator's award has been filed.

### ***Cost***

There is no cost to the parties for judicial arbitration or for the pre-arbitration settlement conference.

## **MEDIATION**

### ***Description***

Mediation is a voluntary, flexible, and confidential process in which a neutral third party "mediator" facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement that resolves all or part of the dispute after exploring the significant interests, needs, and priorities of the parties in light of relevant evidence and the law.

Although there are different styles and approaches to mediation, most mediations begin with presentations of each side's view of the case. The mediator's role is to assist the parties in communicating with each other, expressing their interests, understanding the interests of opposing parties, recognizing areas of agreement and generating options for resolution. Through questions, the mediator aids each party in assessing the strengths and weaknesses of their position.



A mediator does not propose a judgment or provide an evaluation of the merits and value of the case. Many attorneys and litigants find that mediation's emphasis on cooperative dispute resolution produces more satisfactory and enduring resolutions. Mediation's non-adversarial approach is particularly effective in disputes in which the parties have a continuing relationship, where there are multiple parties, where equitable relief is sought, or where strong personal feelings exist.

### ***Operation***

San Francisco Superior Court Local Court Rule 4 provides three different **voluntary mediation programs** for civil disputes. An appropriate program is available for all civil cases, regardless of the type of action or type of relief sought.

To help litigants and attorneys identify qualified mediators, the Superior Court maintains a list of mediation providers whose training and experience have been reviewed and approved by the Court. The list of court approved mediation providers can be found at [www.sfgov.org/courts](http://www.sfgov.org/courts). Litigants are not limited to mediators on the court list and may select any mediator agreed upon by all parties. A mediation provider need not be an attorney.

Local Rule 4.2 D allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate within 240 days from the date the complaint is filed. If settlement is not reached through mediation, a case proceeds to trial as scheduled.

### ***Private Mediation***

The Private Mediation program accommodates cases that wish to participate in private mediation to fulfill the court's alternative dispute resolution requirement. The parties select a mediator, panel of mediators or mediation program of their choice to conduct the mediation. The cost of mediation is borne by the parties equally unless the parties agree otherwise.

Parties in civil cases that have not been ordered to arbitration may consent to private mediation at any point before trial. Parties willing to submit a matter to private mediation should indicate this preference on the Stipulation to Alternative Dispute Resolution form or the Case Management Statement (CM-110). Both forms are attached to this packet.

### ***Mediation Services of the Bar Association of San Francisco***

The Mediation Services is a coordinated effort of the San Francisco Superior Court and The Bar Association of San Francisco (BASF) in which a court approved mediator provides three hours of mediation at no charge to the parties. It is designed to afford civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint, in an effort to resolve the matter before substantial funds are expended on the litigation process. Although the goal of the program is to provide the service at the outset of the litigation, the program may be utilized at anytime throughout the litigation process.

The mediators participating in the program have been pre-approved by the court pursuant to strict educational and experience requirements.

After the filing of the signed Stipulation to Alternative Dispute Resolution form included in this ADR package the parties will be contacted by BASF. Upon payment of the \$200 per party administration fee, parties select a specific mediator from the list of court approved mediation providers. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waiver of the administrative fee based on financial hardship is available.

A copy of the Mediation Services rules can be found on the BASF website at [www.sfbar.org](http://www.sfbar.org), or you may call BASF at 415-782-9000.

### ***Judicial Mediation***

The Judicial Mediation program is designed to provide early mediation of complex cases by volunteer judges of the San Francisco Superior Court. Cases considered for the program include construction defect, employment discrimination, professional malpractice, insurance coverage, toxic torts and industrial accidents.

Parties interested in judicial mediation should file the Stipulation to Alternative Dispute Resolution form attached to this packet indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court Alternative Dispute Resolution Coordinator will coordinate assignment of cases that qualify for the program.

### **Cost**

Generally, the cost of Private Mediation ranges from \$200 per hour to \$400 per hour and is shared equally by the parties. Many mediators are willing to adjust their fees depending upon the income and resources of the parties. Any party who meets certain eligibility requirements may ask the court to appoint a mediator to serve at no cost to the parties.

The Mediation Services of the Bar Association of San Francisco provides three hours of mediation time at no cost with a \$200 per party administrative fee.

There is no charge for participation in the Judicial Mediation program.

## **EARLY SETTLEMENT PROGRAM**

### ***Description***

The Bar Association of San Francisco, in cooperation with the Court, offers an Early Settlement Program ("ESP") as part of the Court's settlement conference calendar. The goal of early settlement is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of the dispute. The two-member volunteer attorney panel reflects a balance between plaintiff and defense attorneys with at least 10 years of trial experience.

As in mediation, there is no set format for the settlement conference. A conference typically begins with a brief meeting with all parties and counsel, in which each is given an opportunity to make an initial statement. The panelists then assist the parties in understanding and candidly discussing the strengths and weaknesses of the case. The Early Settlement Conference is considered a "quasi-judicial" proceeding and, therefore, is not entitled to the statutory confidentiality protections afforded to mediation.

### ***Operation***

Civil cases enter the ESP either voluntarily or through assignment by the Court. Parties who wish to choose the early settlement process should indicate this preference on the status and setting conference statement.

If a matter is assigned to the ESP by the Court, parties may consult the ESP program materials accompanying the "Notice of the Early Settlement Conference" for information regarding removal from the program.

Participants are notified of their ESP conference date approximately 4 months prior to trial. The settlement conference is typically held 2 to 3 months prior to the trial date. The Bar Association's ESP Coordinator informs the participants of names of the panel members and location of the settlement conference approximately 2 weeks prior to the conference date.

Local Rule 4.3 sets out the requirements of the ESP. All parties to a case assigned to the ESP are required to submit a settlement conference statement prior to the conference. All parties, attorneys who will try the case, and insurance representatives with settlement authority are required to attend the settlement conference. If settlement is not reached through the conference, the case proceeds to trial as scheduled.

#### **Cost**

All parties must submit a \$250 generally non-refundable administrative fee to the Bar Association of San Francisco. Parties who meet certain eligibility requirements may request a fee waiver. For more information, please contact the ESP Coordinator at (415) 782-9000 ext. 8717.

\*\*\*\*\*

For further information about San Francisco Superior Court ADR programs or dispute resolution alternatives, please contact:

Superior Court Alternative Dispute Resolution,  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3876

or visit the Superior Court Website at  
[http://sfgov.org/site/courts\\_page.asp?id=3672](http://sfgov.org/site/courts_page.asp?id=3672)



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

400 McAllister Street, San Francisco, CA 94102-4514

v. Plaintiff

Defendant

Case No. \_\_\_\_\_

**STIPULATION TO ALTERNATIVE  
DISPUTE RESOLUTION**

The parties hereby stipulate that this action shall be submitted to the following alternative dispute resolution process:

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Private Mediation                  | <input type="checkbox"/> Mediation Services of BASF | <input type="checkbox"/> Judicial Mediation |
| <input type="checkbox"/> Binding arbitration                |   | Judge _____                                 |
| <input type="checkbox"/> Non-binding judicial arbitration   |   | Judge _____                                 |
| <input type="checkbox"/> BASF Early Settlement Program      |   |   |
| <input type="checkbox"/> Other ADR process (describe) _____ |   |   |

Plaintiff(s) and Defendant(s) further agree as follows:

_____ Name of Party Stipulating	_____ Name of Party or Attorney Executing Stipulation	_____ Signature of Party or Attorney
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Cross-defendant		Dated: _____

_____ Name of Party Stipulating	_____ Name of Party or Attorney Executing Stipulation	_____ Signature of Party or Attorney
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Cross-defendant		Dated: _____

_____ Name of Party Stipulating	_____ Name of Party or Attorney Executing Stipulation	_____ Signature of Party or Attorney
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Cross-defendant		Dated: _____

☐ Additional signature(s) attached



**CM-110**

<b>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):</b>		<b>FOR COURT USE ONLY</b>	
TELEPHONE NO.: FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):			
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:			
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:			
<b>CASE MANAGEMENT STATEMENT</b> (Check one): <input type="checkbox"/> <b>UNLIMITED CASE</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>LIMITED CASE</b> (Amount demanded is \$25,000 or less)			
		CASE NUMBER:	
<b>A CASE MANAGEMENT CONFERENCE is scheduled as follows:</b> Date: Time: Dept.: Div.: Room: Address of court (if different from the address above):			

1. **Party or parties (answer one):**  
a. ☐ This statement is submitted by party (name):  
b. ☐ This statement is submitted jointly by parties (names):
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**  
a. The complaint was filed on (date):  
b. ☐ The cross-complaint, if any, was filed on (date):
3. **Service (to be answered by plaintiffs and cross-complainants only)**  
a. ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.  
b. ☐ The following parties named in the complaint or cross-complaint  
(1) ☐ have not been served (specify names and explain why not):  
(2) ☐ have been served but have not appeared and have not been dismissed (specify names):  
(3) ☐ have had a default entered against them (specify names):  
c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
4. **Description of case**  
a. Type of case in ☐ complaint ☐ cross-complaint (describe, including causes of action):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request ☐ a jury trial ☐ a nonjury trial (if more than one party, provide the name of each party requesting a jury trial):

6. Trial date

- a. ☐ The trial has been set for (date):  
 b. ☐ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):  
 c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

- a. ☐ days (specify number):  
 b. ☐ hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:  
 b. Firm:  
 c. Address:  
 d. Telephone number:  
 e. Fax number:  
 f. E-mail address:  
 g. Party represented:

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference (specify code section):

10. Alternative Dispute Resolution (ADR)

- a. Counsel ☐ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.  
 b. ☐ All parties have agreed to a form of ADR. ADR will be completed by (date):  
 c. ☐ The case has gone to an ADR process (indicate status):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

## 10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☐ Mediation  
(2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)  
(3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)  
(4) ☐ Binding judicial arbitration  
(5) ☐ Binding private arbitration  
(6) ☐ Neutral case evaluation  
(7) ☐ Other (specify):

- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.  
f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.  
g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

## 11. Settlement conference

- ☐ The party or parties are willing to participate in an early settlement conference (specify when):

## 12. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):  
b. Reservation of rights: ☐ Yes ☐ No  
c. ☐ Coverage issues will significantly affect resolution of this case (explain):

## 13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- ☐ Bankruptcy ☐ Other (specify):

Status:

## 14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.  
(1) Name of case:  
(2) Name of court:  
(3) Case number:  
(4) Status:  
☐ Additional cases are described in Attachment 14a.  
b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

## 15. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

## 16. Other motions

- ☐ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

**17. Discovery**

- a. ☐ The party or parties have completed all discovery.
- b. ☐ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
--------------	--------------------	-------------

- c. ☐ The following discovery issues are anticipated (*specify*):

**18. Economic Litigation**

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

**19. Other Issues**

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

**20. Meet and confer**

- a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

**21. Case management orders**

Previous case management orders in this case are (*check one*): ☐ none ☐ attached as Attachment 21.

**22. Total number of pages attached (*if any*):** \_\_\_\_\_

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

_____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF PARTY OR ATTORNEY)
_____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached



## Superior Court of California County of San Francisco

**HON. DAVID BALLATI**  
PRESIDING JUDGE

### Judicial Mediation Program

**JENIFFER B. ALCANTARA**  
ADR PROGRAM ADMINISTRATOR

The Judicial Mediation program offers mediation of complex civil litigation by a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. Cases that will be considered for participation in the program include, but are not limited to professional malpractice, construction, employment, insurance coverage disputes, mass torts and complex commercial litigation. Judicial mediation offers civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint in an effort to resolve the matter before substantial funds are expended. This program may also be utilized at anytime throughout the litigation process. The panel of judges currently participating in the program includes:

The Honorable David J. Ballati  
The Honorable Anne Bouliane  
The Honorable Ellen Chaitin  
The Honorable Robert L. Dondero  
The Honorable Ernest H. Goldsmith  
The Honorable Harold E. Kahn  
The Honorable Patrick J. Mahoney  
The Honorable Tomar Mason

The Honorable James J. McBride  
The Honorable Kevin M. McCarthy  
The Honorable John E. Munter  
The Honorable Ronald Quidachay  
The Honorable A. James Robertson, II  
The Honorable John K. Stewart  
The Honorable Mary E. Wiss

Parties interested in judicial mediation should file the Stipulation to Alternative Dispute Resolution form attached to this packet indicating a joint request for inclusion in the program and deliver a courtesy copy to Dept. 212. A preference for a specific judge may be indicated. The court Alternative Dispute Resolution Program Administrator will facilitate assignment of cases that qualify for the program.

Note: Space is limited. Submission of a stipulation to judicial mediation does not guarantee inclusion in the program. You will receive written notification from the court as to the outcome of your application.

Superior Court Alternative Dispute Resolution  
400 McAllister Street, Room 103, San Francisco, CA 94102  
(415) 551-3876



POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>MARK ANTOINE M FOSTER</b> <b>200 CORPUS CRISTIE ROAD #A</b> <b>ALAMEDA, CA, 94502</b> TELEPHONE NO: <b>415 756 1611</b> FAX NO. (Optional): E-MAIL ADDRESS (Optional): <b>619 646 3564</b> ATTORNEY FOR (Name):		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: <b>400 MCALLISTER</b> MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: <b>CIVIL CENTER</b>		
PLAINTIFF/PETITIONER: <b>MARK ANTOINE FOSTER</b> DEFENDANT/RESPONDENT: <b>MORGAN Lewis &amp; Bokus and ERIC Heckley</b>		CASE NUMBER:
<b>PROOF OF SERVICE OF SUMMONS</b>		Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
  - a. ☒ summons
  - b. ☒ complaint
  - c. ☒ Alternative Dispute Resolution (ADR) package
  - d. ☒ Civil Case Cover Sheet (served in complex cases only)
  - e. ☐ cross-complaint
  - f. ☐ other (specify documents):
3. a. Party served (specify name of party as shown on documents served):  
  
 b. ☐ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
4. Address where the party was served:
5. I served the party (check proper box)
  - a. ☒ by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): (2) at (time):
  - b. ☐ by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
    - (1) ☐ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
    - (2) ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
    - (3) ☐ (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
    - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
    - (5) ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

Page 1 of 2

## PROOF OF SERVICE OF SUMMONS



PLAINTIFF/PETITIONER: <u>MARK ANTOINE FOSTER</u>	CASE NUMBER:
DEFENDANT/RESPONDENT: <u>MORGAN LEWIS &amp; BOKIUS</u>	

5. c. ☐ by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid.
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ by other means (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☐ On behalf of (specify):

under the following Code of Civil Procedure section:

- |   |   |
|---|---|
| <input type="checkbox"/> 416.10 (corporation)                     | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)             | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input type="checkbox"/> 416.40 (association or partnership)      | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input type="checkbox"/> 416.50 (public entity)                   | <input type="checkbox"/> 415.46 (occupant)                            |
|   | <input type="checkbox"/> other.                                       |

7. Person who served papers

- a. Name: Thom McMullen
- b. Address: 725 E 4th St #408, SFO, 94109
- c. Telephone number: 619 446 0845
- d. The fee for service was: \$ 0

e. I am:

- (1) ☒ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☐ a registered California process server:
- (i) ☐ owner ☐ employee ☐ independent contractor.
- (ii) Registration No.:
- (iii) County:

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: February 7 2008

Thom McMullen

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

(SIGNATURE)